

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE  
2005 OCT -6 P 4:31

BALBIR SINGH,

Plaintiff,

v.

MGI PHARMA, INC., and  
MGI PHARMA BIOLOGICS, f/k/a,  
ZYCOS, INC.,

Defendants.

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Civil Action No. 05 1167 1 GAO

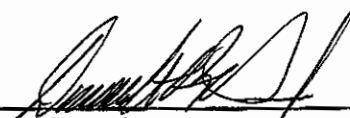
**DEFENDANT MGI PHARMA BIOLOGICS' MOTION TO DISMISS  
COUNTS IV AND V OF PLAINTIFF'S COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant MGI Pharma Biologics, by and through its counsel, respectfully moves the Court to dismiss Counts IV (Breach of Contract Implied-in-Fact) and V (Unjust Enrichment) of the Complaint with prejudice because they fail to state a claim upon which relief can be granted, based upon all of the arguments and authorities set forth in Defendant's supporting memorandum of law, filed with this motion.

**Local Rule 7.1 Certification**

Pursuant to Local Rule 7.1, the undersigned certifies that defense counsel has contacted Plaintiff's counsel to discuss this motion and has not been able to reach agreement.

Dated this 6th day of October 2005.

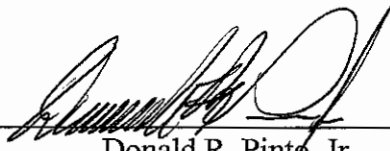
  
Donald R. Pinto, Jr., BBO 548421  
RACKEMANN SAWYER & BREWSTER  
One Financial Center  
Boston, MA 02111  
Tel: 617-951-1118  
Fax: 617-542-7437

Andrew R. McGaan, P.C.  
Jamenda A. McCoy  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Tel: 312-861-2000  
Fax: 312-861-2200

*Counsel for Defendant  
MGI Pharma Biologics, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true copy of the foregoing document on the attorney of record for each other party by mail.

  
\_\_\_\_\_  
Donald R. Pinto, Jr.

Dated: October 6, 2005